

Attachment A**MIAMI-DADE COUNTY
LIVING WAGES
SUPPLEMENTAL GENERAL CONDITION**

Service contractors providing a covered service are advised that the provisions of Section 2-8.9 of the Code of Miami-Dade County, (Code) as amended by Ordinance [Governing Legislation], will apply to any contract(s) awarded pursuant to this bid or issuance of a GASP/Permit, lease, or other Service Contract agreement by Miami-Dade County Aviation Department. By submitting a bid or executing a contract pursuant to these specifications, a service contractor is hereby agreeing to comply with the provisions of Section 2-8.9, and to acknowledge awareness of the penalties for non-compliance. A copy of this Code Section may be obtained online at www.miamidade.gov.

This Supplemental General Conditions is organized with the following sections:

1. Definitions
2. Minimum Wages and Posting of Information.
3. Liability for Unpaid Wages; Sanctions; Withholding
4. Payrolls, Records and Reporting
5. Subcontracts
6. Complaints and Hearings; Contract Termination and Debarment

1. DEFINITIONS

- A. Administrative hearing officer means a person designated by the County Manager to hold administrative hearings on complaints of practices prohibited by this Implementing Order.
- B. Applicable department means the County department(s) using the service contract.
- C. Complaint means any written charge/allegation presented to the Compliance Officer alleging a practice prohibited by the Code, implementing Order No. 3-30 and these Supplemental General Conditions.
- D. Compliance officer means the Director of the Department of Small Business Development or his/her designee to review compliance with the Governing Legislation or Living Wage Ordinance and the Administrative Order.
- E. Contract means an agreement for services covered by the Living Wage Code involving the County or Public Health Trust, or approved by the County, the Procurement Director or his/her designee, or the Public Health Trust or a Permit or Lease agreement with Miami-Dade County Aviation Department.
- F. Contracting officer means the County and Public Health Trust staff or any other County personnel responsible for issuing County service contracts.
- G. County means the government of Miami-Dade County or the Public Health Trust.
- H. Covered employee means anyone employed by any service contractor, as further defined in the Code either full or part time, as an employee with or without benefits that is providing covered services pursuant to the service contractor's contract with the County.
- I. Covered employer means any and all service contractors and subcontractors of service contractors providing covered services.

J. Covered services are any one of the following:

- (1) County Service Contracts - Contracts awarded by the County that involve a total contract value of over \$100,000 per year for the following services:
 - (i) food preparation and/or distribution;
 - (ii) security services;
 - (iii) routine maintenance services such as custodial, cleaning, refuse removal, repair, refinishing and recycling;
 - (iv) clerical or other non-supervisory office work, whether temporary or permanent;
 - (v) transportation and parking services including airport and seaport services;
 - (vi) printing and reproduction services; and,
 - (vii) landscaping, lawn and/or agricultural services.
- (2) Services provided ~~to~~ at Miami-Dade County Aviation facilities: Any service that is provided by a Service Contractors at a Miami-Dade County Aviation Department Facility is a covered service without reference to any contract value.
 - (i) Ramp Service: Guiding aircraft in and out of Airport; aircraft loading and unloading positions, designated by the Aviation Department; placing in position and operating passenger, baggage and cargo loading and unloading devices, as required for the safe and efficient loading and unloading of passengers, baggage and cargo to and from aircraft; performing such loading and unloading; providing aircraft utility services, such as air start and cabin air; fueling; catering; towing aircraft; cleaning of aircraft; delivering cargo, baggage and mail to and from aircraft to and from locations at any Miami-Dade County Aviation Department facility; and providing such other ramp services approved in writing by the Aviation Department;
 - (ii) Porter Assistance Services: Handling and transportation through the use of porters, or other means, of baggage and other articles of the passengers of contracting air carriers or aircraft operators, upon request of the passenger, in public access areas of the Airport Terminal Complex. The Living Wage shall not apply to employees performing tip-related porter assistance services, including curbside check-in;
 - (iii) Passenger Services: Preparing such clearance documents for the baggage and cargo of aircraft passengers, as may be required by all governmental agencies; furnishing linguists for the assistance of foreign-speaking passengers; passenger information assistance; arranging in-flight meals for departing aircraft with persons or companies authorized by the Department to provide such meals; and providing assistance to handicapped passengers;
 - (iv) Dispatching and Communications Services: Providing ground to aircraft radio communication service; issuing flight clearances; sending and receiving standard arrival, departure and flight plan messages with appropriate distribution of received messages; providing standby radio flight watch for aircraft in flight; and calculation of fuel loads and take-off and landing weights for aircraft;
 - (v) Meteorological Navigation Services: Providing information based on the analysis and interpretation of weather charts; planning aircraft flights in accordance with the latest accepted techniques; providing appropriate prognostic weather charts; and generally providing information appropriate for enroute aerial navigation;
 - (vi) Ticket Counter and Operations Space Service: The operation of ticket counter

and airlines' operations space; ticket checking, sales and processing; weighing of baggage; operation of an information, general traffic operations and communications office for air carriers and aircraft operators with whom the Service Contractor has contracted to supply such services;

- (vii) Janitorial Services;
- (viii) Delayed Baggage Services;
- (ix) Security Services unless provided by federal government or pursuant to a federal government contract; and,
Any other type of service that a GASP permittee is authorized to perform at any Miami-Dade County Aviation Department Facility will be considered a covered service, regardless of whether the service is performed by a GASP permittee or other service contractor.
- (x) In warehouse cargo handlers.

- K. Debar means to exclude a service contractor, its individual officers, its principal shareholders, its qualifying agent or its affiliated businesses from County contracting and subcontracting for a specific period of time, pursuant to section 10-38 of the Code of Miami-Dade County.
- L. Living wage means the minimum hourly pay rate with or without a health benefits in effect for the fiscal year in which the work is performed.
- M. Living Wage Commission means a fifteen person advisory board established by the County Commission for the purpose of reviewing the effectiveness of the Living Wage, reviewing certifications submitted by covered employers to the County include, reviewing complaints filed by employees and making recommendations to the County Mayor and the County Commission regarding same.
- N. Project manager means the person assigned under a contract, usually a department director of the using agency or his/her designee, who has primary responsibility to manage the contract and enforce contract requirements.
- O. Service contractor is any individual, business entity, corporation (whether for profit or not-for-profit), partnership, limited liability company, joint venture, or similar business that is conducting business in Miami-Dade County or any immediately adjoining county and meets the following criteria:
 - (1) the service contractor is paid in whole or in part from one (1) or more of the County's general fund, capital projects funds, special revenue funds or any other funds either directly or indirectly, whether by competitive bid process, informal bids, requests for proposals, some form of solicitation, negotiation, or agreement, or any other decision to enter into a contract;
 - (2) the service contractor and any subcontractor is engaged in the business to provide covered services either directly or indirectly for the benefit of the County; or
 - (3) the service contractors is a General Aeronautical Service (GASP) Permittee or otherwise provides any of the covered services defined herein at any Miami-Dade County Aviation Department facility including Miami International Airport pursuant to a permit, lease agreement or otherwise.

2. MINIMUM WAGES, HEALTH BENEFIT PLANS AND POSTING OF INFORMATION

- A. The Living Wage rate and Notice can be obtained from the Department of Small Business Development at 305-375-3111 or on the web at www.miamidade.gov.sbad/living_wage_poster.asp.

All covered employees providing covered services shall be paid not less than the living wage rate in effect for the fiscal year in which the work is performed. When the covered employer seeks to comply with the Code by choosing to pay the wage rate applicable when also providing a qualifying Health Benefit Plan, such health benefit plan shall consist of a per hour contribution towards the provision of a Health Benefit Plan for employees and, if applicable, their dependents in accordance with the current rate for the given year. Proof of the provision of such a health benefit plan must be submitted to the compliance officer to qualify for the wage rate for employees with a health benefit plan.

- B. The minimum amount of payment by a Service Contractor for the provision of a Health Benefit Plan on a per-hour basis will be calculated based on a maximum of a 40-hour work week. Overtime hours will not require additional payments towards the provision of a health benefit plan. If the service contractor pays less than the required amount for provision a health benefit plan, then the service contractor may comply with the Living Wage requirements by paying the covered employee the difference between the premium it pays for the health benefit plan of the Covered Employee and the minimum amount required by this section for a qualifying health benefit plan. The service contractor may require that all employees enroll in a health benefit plan offered by the service contractor, provided that the employee is not required to pay a premium contribution for employee-only coverage. Health Benefit Plan for purposes of complying with the living wages shall qualify if it includes the benefits contained in a standard health benefit plan meeting the requirements set forth in §627.6699(12)(a) Florida Statutes.

To the extent a Covered Employer seeks to pay the lower Living Wage rate for employers providing a qualifying Health Benefit Plan during the initial eligibility period applicable to new employees, the Living Wage requirement may be complied with as follows during the eligibility period:

1. A Covered Employer may only qualify to pay the Living Wage rate applicable to employees with a Health Benefit Plan for a term not to exceed the first ninety (90) days of the new initial employee's eligibility period, said term commencing on the employee's date of hire, if the Covered Employer has taken the necessary steps to effectuate coverage for such employee.
 2. If the Covered Employee is not provided with a qualifying Health Benefit Plan within ninety (90) days of initial hire, then the Covered Employer, commencing on the ninety-first (91) day of the new employee's initial eligibility period, must commence to pay the applicable Living Wage rate for Covered Employees without a Health Benefit Plan and must retroactively pay the Covered Employee the difference between the two Living Wage rates for the term of the eligibility period.
- C. The Living Wage rate is annually indexed based on the Consumer Price Index (CPI) calculated by the U.S. Department of Commerce as applied to the County of Miami-Dade.
- D. Covered employees shall be paid by company or cashier's check, not less than bi-weekly, and without subsequent deduction or rebate on any account (except as such payroll deductions as are directed or permitted by law or by a collective bargaining agreement). The covered employer shall pay wage rates in accordance with federal and all other applicable laws such as overtime and similar wage laws.
- E. Covered employers must post a copy of the Living Wage rate notice issued by the County in a visible place on the site where such contract work is being performed and shall be supplied to the employee within a reasonable time after a request to do so. Covered employers are also required to print the following statements on the front of the covered employee's first paycheck

and every six months thereafter: "You are required by Miami-Dade County law to be paid at least [insert applicable rate under this Chapter] dollars an hour. If you are not paid this hourly rate, contact your supervisor or a lawyer." All notices will be printed in English, Spanish and Creole.

- F. Covered employers must refrain from terminating, reducing the compensation, or otherwise discriminating against an employee performing work on the contract even though a complaint of practices has been made by the employee or other investigative or enforcement action is being taken regarding such service contractor.

3. LIABILITY FOR UNPAID WAGES; SANCTIONS; WITHHOLDING

- A. Liability for Unpaid Wages: Covered employers found to be in violation of the Living Wage requirements shall be required to pay wage restitution to the affected employee(s) within thirty (30) days of the finding of non-compliance. Request for appeals of violations must be filed in writing with the compliance officer within thirty (30) days of receipt of the violation.
- B. Sanctions: In addition to payment of wage restitution to affected employee(s), the Compliance Officer may also sanction the service contractor for violations in at least one (1) of the following ways:
 - 1. Penalties payable to the County in an amount equal to 10% of the amount of the underpayment of wages and/or benefits for the first instance of underpayment; 20% for the second instance; and for the third and successive instances 30% of the amount of underpayment. A fourth violation shall constitute default of the contract where the underpayment occurred and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized to defray costs of administering the Living Wage provisions.
 - 2. The sum of up to five hundred dollars (\$500.00) for each week for each covered employee found to have not been paid in accordance with this Chapter.
 - 3. Suspend payment or terminate payment under the contract or terminate the contract with the service contractor.
 - 4. If a service contractor fails to cure a Notice of Violation or pay any sanctions that are assessed by the County, such service contractor and all officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of the non-complying service contractor may be declared by the County to be ineligible for bidding on or otherwise participating in Living Wage contracts and permits until all required payments have been paid in full and regardless of whether such payment has been made may also be declared ineligible for bidding or otherwise participating in Living Wage contracts for a period up to three (3) years. In addition all covered employers shall be ineligible for Living Wage contracts and permits under this section where any officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of the covered employer where officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of a covered employer who has been declared ineligible under this Chapter.;
 - 5. In addition to any other sanctions provided for herein, for violations other than underpayment for wages and/or benefits, damages payable to the County in the

amount of five hundred dollars (500.00) per week for each week in which the violation remains outstanding.

6. The service contract who fails to timely and adequately respond in the manner and within the timeframe set forth in a written request from the County to a notice of noncompliance, or fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination may by the County after a Compliance Meeting shall be deemed no to have complied with the requirements of this section as stated in the notice or determination of noncompliance and. in the case of underpayment of the Living Wage required, an amount sufficient to pay any underpayment shall be withheld from contract proceeds to include any deposits and/or bonds and remitted to the employee and the Service Contractor may be fined the applicable penalty for such underpayment as defined herein.
7. All such sanctions recommended or imposed shall be a matter of public record.
8. All unpaid sanctions imposed pursuant to the authority of this Chapter shall bear interest at the same rate as the state of Florida statutory rate for judgments provided by Florida Statutes Section 55.03.
9. A service contractor found to have retaliated or discriminated against a covered employee shall be ordered to pay restitution and reinstate the discharged employee with back pay to the date of the violations and may be imposed a sanction as specified in this section.

C. Withholding

The County may withhold from the covered employer accrued payments as may be considered necessary to pay employees of the covered employer or any subcontractor for the performance of the contract work, the difference between the hourly living wage rate plus, if applicable, health benefits required to be paid by the covered employer to the employees on the contract and the amounts received by such employee and an amount equal to the employers contribution for applicable payroll taxes. Where violations have been found and upheld, the covered employer or their agents shall not be entitled to refunds of the amounts withheld in the event the covered employer has failed to properly reimburse employees, and these funds may be remitted to the employees by the County with amounts for federal withholding and other taxes remitted to the appropriate agencies as required by federal law.

4. PAYROLL; RECORDS; REPORTING

- A. Covered employers are required to keep, produce upon request, and allow access to, for a period of three (3) years from the expiration, suspension or termination date of the contract subject to this Administrative Order, accurate written records signed under oath as true and correct showing:
 - a. the name, address, social security number, job title, and classification of each covered employee performing covered services on a contract;
 - b. the number of hours worked each day by each covered employees;
 - c. for each covered employee, the gross wages earned and evidence of payment thereof; a record of health benefit payments, including contributions to approved plans; and
 - d. any other data or information the the County should require.

The covered employer shall submit to the applicable department, every six (6) months, a complete payroll showing the employer's payroll records for each covered employee working on the contract for covered services for one payroll period.

- C. The covered employer shall file with the applicable department, every six months, reports of employment activities to made publicly available, including race and gender of employees hired and terminated; zip codes of employees hired and terminated; and wage rates of employees hired and terminated
- D. The covered employer shall make the records required to be kept hereunder available for inspection, copying or transcription by an authorized representative of the County, and shall permit such representative to interview employees during working hours on the job. Failure to submit the required reports upon request or to make records available may be grounds for sanctions as outlined in Section III. The service contractor is responsible for the submission of the information required hereunder and for the maintenance of records and provision of access to same by all subcontractors.

5. SUBCONTRACTS

The service contractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 6 of this provision and also a clause requiring the subcontractors to include these clauses in any subcontracts. The service contractor shall be responsible for compliance by any subcontractor with the clauses set forth in paragraphs 1 through 6 of this provision. The prime service contractor will be responsible for compliance by all subcontractors. In the event of non-payment or underpayment of the required wages, the prime service contractor shall be liable to the underpaid employees of the subcontractor for the amount of each underpayment.

6. PROCEDURES FOR APPEAL THROUGH ADMINISTRATIVE HEARING OFFICER PROCESS; CONTRACT TERMINATION AND DEBARMENT

- A. Appeals of findings of violation and imposition of penalties by the compliance officer shall be heard by an administrative hearing officer. Upon the receipt of a written appeal, the compliance officer shall notify the County Manager in writing and the County Manager shall appoint an administrative hearing officer and set a time for an administrative hearing. Failure to appeal within the specified time shall be considered a waiver of the appeal process provided for in Section 3.A and an admission of the complaint/violation.
- B. Notification of hearing date shall be served by the compliance officer upon the covered employer against whom the complaint is made within ten (10) working days of the appointment of the administrative hearing officer. Such notice shall be by certified mail, return receipt requested. Such notice shall include:
 - 1) A copy of the written complaint, including reasons and causes for the proposed administrative hearing outlining alleged prohibited practices upon which it is based;
 - 2) The penalties assessed;
 - 3) That an administrative hearing shall be conducted before an administrative hearing officer on a date and time not to exceed thirty (30) business days after service of the notice. The notice shall also advise the covered employer that they may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them; and,
 - 4) A description of the effect of the issuance of the notice of the proposed administrative hearing and the potential effect(s) of this administrative hearing.
- C. The compliance officer or his/her designee shall, with the assistance of the project manager, present evidence and arguments to the administrative hearing officer.

- D. No later than seven (7) days prior to the scheduled hearing date, the covered employer must furnish the compliance officer a list of the defenses the covered employer intends to present at the administrative hearing. If the covered employer fails to submit such list, in writing, at least seven (7) days prior to the administrative hearing, or fails to seek an extension of time within which to do so, the covered employer shall be deemed to have waived the opportunity to be heard at the administrative hearing. The administrative hearing officer shall have the right to grant or deny an extension of time, and the decision may only be reviewed upon an abuse of discretion.
- E. Hearsay evidence shall be admissible at the administrative hearing, but shall not form the sole basis for finding a violation of Section 2-8.9. The administrative hearing shall be transcribed, taped or otherwise recorded by a court reporter, at the election of the administrative hearing officer and at the expense of the County. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party. The cost of such transcription may be assessed, by the hearing officer, against a service contractor that has been found to violate Section 2-8.9.
- F. Upon completion of the administrative hearing, the Administrative Hearing Officer shall submit written findings and recommendations together with a transcript and exhibits of the administrative hearing, to the County Manager or his/her designee within thirty (30) days of the receipt of the transcript.

If the County Manager or his/her designee determines a covered employer failed to comply with the provisions of the Code, the non complying covered employer and the principal owners and/or qualifying agent thereof may, in addition to any sanctions imposed pursuant to the Code and included in Section III of the Supplemental General Conditions, be prohibited from bidding on or otherwise participating in County contracts for a specified period of time pursuant to Section 10-38 of the Code of Miami-Dade County.

A breach of the clauses contained in this Supplemental General Conditions shall be deemed a breach of this contract/Permit or Lease Agreement and may be grounds for termination of the contract, Permit or Lease Agreement and grounds for debarment, and any other remedies available to the County.